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Consultant, The Honorable Joe Lee

Chapter 28. Bankruptcy Code § § 524-528
Code § 524. EFFECT OF DISCHARGE
Part TWO. DIGEST OF DECISIONS
III. DISCHARGE AS VOIDING JUDGMENTS AND OPERATING AS INJUNCTION UNDER § 524(a)(1), (a)(2)
A. IN GENERAL
1. INJUNCTIVE EFFECT OF DISCHARGE

Summary

§ 28:48. Applicability of discharge injunction to recoupment

Discharge injunction does not prohibit recoupment.

Fourth Circuit

In re Powell, 284 B.R. 573, 40 Bankr. Ct. Dec. (CRR) 100, 29 Employee Benefits Cas. (BNA) 1507 (Bankr. D. Md. 2002)

Sixth Circuit

In re Sigman, 270 B.R. 858, 38 Bankr. Ct. Dec. (CRR) 233 (Bankr. S.D. Ohio 2001)

Matter of Gaither, 200 B.R. 847, 36 Collier Bankr. Cas. 2d (MB) 1480, Bankr. L. Rep. (CCH) ¶ ; 77138, Unempl. Ins. Rep. (CCH) ¶ ; 22165 (Bankr. S.D. Ohio 1996)

Ninth Circuit

In re Madigan, 270 B.R. 749, 38 Bankr. Ct. Dec. (CRR) 227, 27 Employee Benefits Cas. (BNA) 1753 (B.A.P. 9th Cir. 2001)

Eleventh Circuit

In re Jones, 289 B.R. 188 (Bankr. M.D. Fla. 2002)

Justification for defensive use of recoupment in bankruptcy is that there is no independent basis for "debt," and thus there is no "claim" against estate property. In re Madigan, 270 B.R. 749, 38 Bankr. Ct. Dec. (CRR) 227, 27 Employee Benefits Cas. (BNA) 1753 (B.A.P. 9th Cir. 2001).

Because recoupment is neither "claim" nor "debt" that is dischargeable, creditor was under no obligation to file proof of claim or to commence dischargeability proceeding in order to exercise recoupment rights, and was not in violation of discharge injunction. In re Sigman, 270 B.R. 858, 38 Bankr. Ct. Dec. (CRR) 233 (Bankr. S.D. Ohio 2001).

County failed to present sufficient case for the extraordinary grant of relief from the discharge injunction so that it could liquidate its counterclaim against debtor in state court; county was free to assert its counterclaim defensively while litigating debtor's breach-of-contract action in state court, that is, county could assert such counterclaim in recoupment while litigating within such court, any necessary liquidation of such counterclaim could be accomplished in bankruptcy court within context of creditors committee's objection to county's proof of claim, and

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bankruptcy court could, and would, remove the burden of litigating such claim objection by the committee simultaneous with litigation of debtor's state-court action by staying such claim objection until debtor's action had been prosecuted to judgment in the state court. 11 U.S.C.A. § 524. **In re Sargent Elec. Co., 341 B.R. 514, 46 Bankr. Ct. Dec. (CRR) 520 (Bankr. W.D. Pa. 2006)**.

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